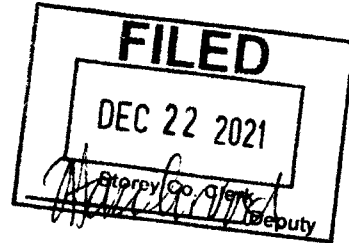


Exhibit 3

Exhibit 3



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7 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,**
8 **IN AND FOR STOREY COUNTY**
9

10 ***

11 **HERMAN MENEZES, LLC, a Nevada Limited**
12 **Liability Company**

CASE NO: 21 OC 00001 – 1E

13 **Plaintiff,**

14 **vs.**

DEPT NO: 1

15 **BRESCIANI HAY COMPANY, INC., a Nevada**
16 **Corporation, and ALVIN A. BRESCIANI, an**
17 **Individual, and JUNGO RANCHES, LLLP, an**
18 **Idaho Limited Liability Limited Partnership, and**
19 **DOE individuals 1-10 inclusive, and ROE**
20 **corporations 1-10, inclusive,**

21 **Defendants.**
22 _____/

23 **ORDER STRIKING ANSWER AND GRANTING DEFAULT JUDGMENT**

24 **AGAINST BRESCIANI DEFENDANTS ON LIABILITY FOR FAILURE TO**

25 **COMPLY WITH COURT ORDERS**

26 **This matter involves disputes involving the purchase and sale of hay between Plaintiff**
27 **HERMAN MENEZES, LLC, a Nevada Limited Liability Company and BRESCIANI HAY**
28

1 COMPANY, INC., a Nevada Corporation, and ALVIN A. BRESCIANI, an Individual
2 (collectively "Bresciani")

3 The Plaintiff has asserted the following claims against Mr. Bresciani and his company:
4 breach of contract, unjust enrichment, fraud, breach of the implied covenant of good faith
5 and fair dealing, a claim for passing a bad check, for conversion, and for exemplary damages.
6

7 The Plaintiff alleges the following facts in the January 4, 2021 Complaint:

8 On August 5, 2020, Bresciani issued a check to the Plaintiff for the amount of
9 \$67,160 as a deposit to cover the purchase of hay owned by the Plaintiff.
10

11 On August 5, 2020, the Plaintiff received notice from Bank of America that
12 Bresciani's check for \$67,160 was returned due to insufficient funds.
13

14 On August 7, 2020, the Plaintiff sent Bresciani a letter via certified mail return receipt
15 requested informing Bresciani that the check for \$67,160 was returned for insufficient
16 funds. Bresciani did not respond to the Plaintiff's letter nor tender payment to the Plaintiff
17 to cover Bresciani's check for \$67,160.
18

19 Around the time the check discussed above was issued, Bresciani removed
20 approximately \$50,793 in hay (441,680 pounds) from Taylor Farms, which Bresciani
21 obtained based on the bad check.
22

23 The Plaintiff also alleges that Bresciani also failed to deliver approximately \$127,000
24 worth of hay from Jungo Ranches that was owed to the Plaintiff under a separate
25 agreement.
26

27 The facts asserted as alleged in the Plaintiff's Complaint are supported by the
28 Verification of Mark Menezes, an officer of the Plaintiff, which is attached to the Complaint.

1 On March 3, 2021, Bresciani filed an Answer to the Complaint denying the Plaintiff's
2 claims, generally.

3 On August 4, 2021, the Court issued an order as a result of a motion to compel filed by
4 the Plaintiff. The August 4, 2021 order directed Bresciani to provide initial NRCP 16.1
5 disclosures by August 16, 2021, and sanctioned Bresciani \$1,000 in attorney's fees payable to
6 counsel for the Plaintiff within 10 days of the date of service of the order.
7

8 On August 25, 2021, this Court entered an order directing Bresciani to appear and show
9 cause why he should not be sanctioned and/or held in contempt of court for failure to comply
10 with the August 4, 2021 order.
11

12 On September 27, 2021 the Court entered another order again compelling and ordering
13 Bresciani to provide complete NRCP 16.1 initial disclosures by October 24, 2021. The
14 September 27, 2021 Order also directed Bresciani to pay \$100 per month towards the \$1,000
15 sanction of attorney's fees payable to counsel for the Plaintiff. The September 27, 2021 order
16 also expressly stated that failure of Bresciani to strictly comply with the terms of the order may
17 be treated as a contempt against this Court and will result in entry of default against Bresciani
18 under NRCP 37.
19

20 On November 22, 2021, this Court issued another order directing Bresciani to show
21 cause why he should not be sanctioned or held in contempt for failure to comply with the
22 Court's August 4, 2021 and September 27, 2021 orders. In the November 22, 2021 order,
23 the Court directed Bresciani to appear on December 17, 2021. On December 3, 2021, the
24 Plaintiff filed a Notice of Return of Certified Mail Receipt for Notice of Entry of Order to
25 Show Cause, showing that the Court's November 22, 2021 order was served on Bresciani's
26
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28

1 counsel on November 26, 2021. Yet, neither Bresciani nor his counsel appeared at the
2 December 17, 2021 hearing.

3 **Analysis**

4
5 The record before the Court indicates that Bresciani has repeatedly failed to comply
6 with the Court's orders by paying the sanction or by making complete NRCP 16.1
7 disclosures, despite the multiple orders from the Court directing him to do so over a period
8 spanning several months. Further, Bresciani failed to obey this Court's November 22, 2021
9 order to appear and show cause on December 17, 2021 why he should not be held in
10 contempt or further sanctioned.

11
12 NRCP 37(b)(1) provides that if a party refuses to obey a discovery order the Court
13 may issue further just orders, including and order striking pleadings under subsection (C)
14 and rendering default judgment under subsection (F). Bresciani and his counsel have no
15 reasonable grounds to refuse or fail to comply with the Court's August 4, 2021 order,
16 September 27, 2021 order, or November 22, 2021 order. Courts have inherent powers to
17 dismiss actions or enter default judgments for abusive litigation practices. *Young v. Johnny*
18 *Ribeiro Bldg., Inc.*, 106 Nev. 88, 787 P.2d 777 (1990).

19
20 In assessing the appropriate degree of sanction, factors can include the degree of
21 willfulness, the extent to which the non-offending party would be prejudiced by a lesser
22 sanction, the severity of the sanction relative to the severity of the abuse, whether any
23 evidence has been irreparably lost, the fairness of alternative sanctions, the policy favoring
24 adjudication on the merits, whether sanctions unfairly operate to penalize a party for the
25 misconduct of his attorney. *Young v. Johnny Ribeiro Bldg., Inc.*, at 93. These factors all weigh in
26
27
28

1 favor of case terminating sanctions against Bresciani because of the willful nature of the
2 non-compliance of Bresciani. “[S]anctions may only be imposed where there has been
3 willful noncompliance with a court order or where the adversary process has been halted by
4 the actions of the unresponsive party.” *GNLV Corp. v. Seru Control Corp.*, 111 Nev. 866, 869,
5 900 P.2d 323, 325 (1995). While case-terminating sanctions are a “last resort, appropriate
6 only when no lesser sanction will do,” in this case the lesser sanctions already imposed by
7 this Court have not resulted in compliance by Bresciani. *MDB Trucking, LLC v. Versa Prods.*
8 *Co.*, 475 P.3d 397, 400 (Nev. 2020).

11 Bresciani has demonstrated repeated and willful noncompliance with the
12 requirements of NRCP 16.1 and the Court’s Orders, and the adversary process has been
13 completely halted by the actions of Bresciani. In light of the failure of Bresciani to provide
14 complete NRCP 16.1 disclosures, to pay the sanction as directed by the Court, or even to
15 appear before the Court when directed to do so, the more serious sanctions available under
16 NRCP 37(b)(C) and (F) are justified and will be imposed by the Court, including striking
17 Bresciani’s answer and rendering default judgment against Bresciani.

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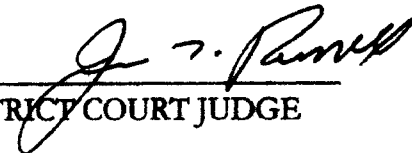
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1
2 BASED ON THE FOREGOING, the March 3, 2021 Answer filed by Defendants
3
4 BRESCIANI HAY COMPANY, INC., a Nevada Corporation, and ALVIN A. BRESCIANI, an
5 Individual, is **STRICKEN** and **DEFAULT JUDGMENT** on liability is entered in favor of
6 HERMAN MENEZES, LLC.

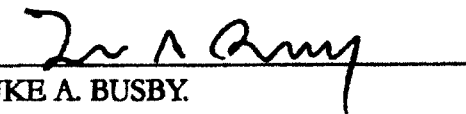
7 The Plaintiff shall file a motion substantiating the damages claimed in this matter
8 within 10 days of issuance of this Order, to which Defendant may respond in accordance
9 with FJDCR 3.8.

10
11 **IT IS SO ORDERED**

12 Dated this 23 of December, 2021.

13
14 By: 
15 DISTRICT COURT JUDGE

16 Submitted By:

17 
18 LUKE A. BUSBY.
19 SBN 10319
20 316 California Ave.
21 Reno, NV 89509
22 775-453-0112
23 luke@lukeandrebushytd.com
24 Attorney for the Plaintiff
25
26
27
28

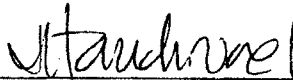
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District Court, and that on December 22nd, 2021, I deposited for mailing, postage paid, at Carson City, Nevada, a true and correct copy of the foregoing Order addressed as follows:

Luke A. Busby, Esq.
316 California Avenue
Reno, NV 89509

Rendal B. Miller, Esq.
Miller Law, Inc.
115 W 5th Street
Winnemucca, NV 89445

Cliff Young, Esq.
Law Office of Cliff Young
650 S Rock Blvd., Ste 21A
Reno, NV 89502



Julie Harkleroad
Judicial Assistant, Dept. 1